No. 88-535

Supreme Court, U.S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1988

LOCAL FREIGHT DRIVERS, LOCAL 208, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner,

VS.

ROZAY'S TRANSFER,
Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I.

LOCAL 208 CONSISTENTLY ADVOCATED TO THE COURTS BELOW JURISDICTION DID NOT EXIST UNDER SECTION 301 TO AWARD NON-CONTRACTUAL INDEMNIFICATION DAMAGES FOR FRAUD

Contrary to Rozay's Transfer's ("Rozay's") representation in its Opposition Brief, Local 208 and its *amicus* consistently opposed the proposition in the courts below federal subject matter jurisdiction exists under Section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), to award non-contractual indemnifica-

tion damages for common law fraud. *See Rozay's Transfer v. Local Freight Drivers, L. 208*, 850 F.2d 1321, 1334 (9th Cir. 1988) and p. 2 of Local 208's Reply Brief to the Ninth Circuit.

Furthermore, the Ninth Circuit considered and addressed this issue as evidenced by its comments "Section 301 . . . applies not only to suits for breach of a collective bargaining agreement once it is duly formed, but also to suits impugning the existence and validity of a labor agreement" and "how this court chooses to characterize the remedy granted in this case and whether simultaneously granting rescission and indemnification is a proper 'contractual' remedy are irrelevant to the district court's remedial authority under Section 301." *Id.* at 1326 and 1334.

II.

THE NINTH CIRCUIT'S EARLIER DECISION IN SOUTHWEST ADMINISTRATORS THE CONTRACT LOCAL 208 AND ROZAY'S EXECUTED WAS "VOIDABLE" AS TO THE TRUST FUND DOES NOT RESOLVE THE ISSUE IN THIS CASE: DO FEDERAL COURTS POSSESS JURISDICTION UNDER SECTION 301 TO ADJUDICATE ACTIONS SEEKING EQUITABLE MONETARY RELIEF BECAUSE OF MISCONDUCT ENGAGED IN DURING CONTRACTUAL NEGOTIATIONS?

In *Southwest Administrators, Inc. v. Rozay's Transfer, Inc.*, 791 F.2d 769 (9th Cir. 1986), *cert. den.*, ____ U.S. ____, 107 S.Ct. 951 (1987), the Ninth Circuit concluded that if Rozay's was fraudulently induced to enter into the 1981-1984 collective bargaining agreement ("contract") with Local 208, the contract was not "void" as against a trust fund seeking to collect pension contributions required by the express terms of the contract but was

"voidable" as to the trust fund and Rozay's was contractually obligated to pay the pension contributions. *Id.* at 775.

Contrastly, in this case, the court declared the contract was "null, void, rescinded . . . without effect" as to Rozay's and Local 208 and awarded Rozay's equitable indemnification damages for fraud.

In awarding damages for fraud, there was not, as Rozay's suggests, a valid contract in effect between it and Local 208 and the monetary relief awarded was not based or predicated on the rescinded contract.

This case concerns the question of whether a court, in the absence of a valid contract, can rely upon Section 301 and award monetary damages compensating a contracting party for the damages it sustained attributable to the other party's fraudulent misconduct engaged in during collective bargaining negotiations.

III.

THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE LEGISLATIVE HISTORY OF SECTION 301 AND DECISIONS RENDERED BY OTHER CIRCUITS WHICH HAVE HELD FEDERAL COURTS DO NOT POSSESS JURISDICTION UNDER SECTION 301 TO ADJUDICATE COMMON LAW FRAUD CLAIMS WHICH RELATE TO CONTRACTUAL NEGOTIATIONS.

Although this court has never adopted a restrictive view of who possesses standing to sue under Section 301 alleging a violation of a contract or what types/kinds of contracts are encompassed by it, it has also "never intimated that any action merely relating to a contract within the coverage of § 301 arises exclusively under that sec-

tion." *Franchise Tax Bd. v. Const. Laborers Vac. Trust,* 463 U.S. 1, 25 n. 28 (1983).

In awarding equitable indemnification damages for fraud because of misconduct engaged in during contractual negotiations in the absence of a valid contract, the Ninth Circuit's interpretation of Section 301 not only conflicts with interpretations rendered by other circuits but goes far beyond what this court has ever sanctioned.

Furthermore, although the legislative history of Section 301 "is somewhat cloudy and confusing", *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 452 (1957), it overwhelmingly supports the proposition Section 301 was intended to be limited to suits seeking specific performance, declarations of legal rights and/or damages for breach of valid collective bargaining agreements.[1] *See e.g.*, "It makes labor organizations equally responsible with employers for contract violations . . . ." (Congressman Hartley reporting on the House of Representative's ("House") version of the bill); "The committee bill makes collective-bargaining contracts equally binding and enforceable on both parties. In the judgment of the committee, breaches of collective agreement[s] have become so numerous that it is not sufficient to allow the parties to invoke the processes of the National Labor Relations Board ("NLRB") when such breaches occur . . . ." (Senator Taft reporting on the Senate version of

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[1]Although Congressman Hartley, in response to a question from one of his colleagues, did state Section 302 of the House version of the bill was intended to permit a contracting party to bring a declaratory action in court to secure a declaration of legal rights of valid and binding contracts, it should be noted Section 302(a) permitted "[a]any action for or preceding involving a violation of an agreement" whereas Section 301 ultimately provided for only "[s]uits for violations of contracts between an employer and a labor organization . . . ." *Id.* at 455-56 and n. 5.

the bill); "[T]itle III of the bill . . . makes unions suable in the Federal courts for violation of contract." (Comment of Senator Taft); "What is the purpose of title III? The purpose of title III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective bargaining agreement . . . ." (Comment of Senator Taft); "Finally, we have a provision in title III for bringing a lawsuit for breach of contract." (Comment of Senator Taft); "I now come to title III, which is very brief, and merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carrying out contracts legally entered into as a result of collective bargaining . . . . I cannot see how anyone can take issue with so clear-cut a statement as that, or can take issue with the provisions of title III, which simply carry out the idea, by providing that whichever side is guilty of violating a contract solemnly entered into shall be responsible for damages resulting from such violation." (Comments of Senator Smith); and "Fourth, we give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. It does not go beyond that." (Comments of Senator Ball). *See* NLRB, *Legislative History of The Labor-Management Relations Act, 1947* (Vols. 1 and 2), pp. 297, 421, 1014, 1074, 1133, 1145-46 and 1497 (1948).

Rozay's attempt to distinguish decisions rendered by several circuits holding Section 301 does not afford federal courts subject matter jurisdiction to award equitable damages in the absence of a valid contract is unpersuasive.

According to Rozay's, because decisions rendered in the First, Third, Fourth, Sixth and Seventh Circuits involved "pure labor questions . . . which are traditionally decided by the NLRB," those courts properly determined

Section 301 jurisdiction did not exist. [*See* p. 45 of the Opposition Brief.]

This case also involves a pure labor law question traditionally decided by the NLRB and Rozay's does not quarrel with the notion fraudulent misconduct engaged in during contractual negotiations constitutes bad faith bargaining and an unfair labor practice. [*See* pp. 11-12 and n. 4 of the Petition.]

IV.

THE NINTH CIRCUIT'S DECISION A UNION IS LEGALLY OBLIGATED TO DISCLOSE TO AN EMPLOYER MATERIAL INFORMATION CONCERNING THE EMPLOYER'S OBLIGATION TO MAKE TRUST FUND CONTRIBUTIONS TO AN ERISA TRUST AND AN EMPLOYER MAY REASONABLY RELY ON THE UNION'S REPRESENTATIONS REGARDING DISCRETIONARY INTERNAL TRUST POLICY CONFLICTS WITH RELATED DECISIONS RENDERED IN OTHER CIRCUITS AND RAISES IMPORTANT QUESTIONS OF FEDERAL LAW WHICH SHOULD BE RESOLVED BY THIS COURT.

In its Opposition Brief, Rozay's concedes the Ninth Circuit's opinion in this case is the first one to expressly hold a union is legally obligated to disclose material information to an employer concerning its obligations to make contributions to an ERISA trust fund during contractual negotiations and if it fails to do so/ communicates erroneous information, the employer's reliance upon such conduct can be found reasonable and the union held liable to it for damages.

In unsuccessfully attempting to distinguish a long line of cases holding to the contrary, Rozay's suggests the

intent of the party who makes the falsehood is determinative. [See p. 58 of the Opposition Brief.]

Although the issue of whether a union's misrepresentation is negligent or intentional may impact upon the cause of action proven and type/extent of relief awarded, it is not the intent of the union official who communicates the misrepresentation which is determinative on the issue of detrimental reliance but the reasonableness of the employer's reliance upon the misrepresentation.

Previous cases have held an employer's reliance upon a union who makes representations concerning internal discretionary trust policy is unreasonable as a matter of law because of the source of the misrepresentation, not the deliberateness or intent of the source in making it, especially when the information is equally accessible to the employer.

Since waiving Rozay's obligation to make pension contributions was a discretionary decision the trust fund was not forbidden by law to make and "a commonality of interests between the union and the trust fund to further the welfare of the employees" existed, the Ninth Circuit concluded "it was not unreasonable as a matter of law for Rozay's . . . to believe that the union could favorably influence the trust fund." 850 F.2d at 1328-29.

The same type of discretionary trust conduct and commonality of interest between the union who made the misrepresentation and the trust fund existed in the prior cases where the courts reached the opposite conclusion.[2] In finding Local 208 guilty of fraudulent misconduct, the Ninth Circuit declared Rozay's could reasonably rely upon the union's assurances it would influence a favorable

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[2]The only exception may be *Ridens v. Voluntary Separation Program*, 610 F.Supp. 770, 777 (D. Minn. 1985), which did not deal with a collectively-bargained trust fund governed by Section 301.

discretionary decision by the trust fund. In so holding, the Ninth Circuit's decision conflicts with every other decision which has addressed the issue.

V.

CONCLUSION

Accordingly, Local 208 respectfully requests its Petition for Writ of Certiorari be granted.

DATED: October 31, 1988

Respectfully submitted,

WOHLNER, KAPLON, PHILLIPS,
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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On October 31, 1988, I served the within Reply Brief in re: "Local Freight Drivers Local 208 International Brotherhood of Teamsters vs. Rozay's Transfer" in the United States Supreme Court, October Term 1988, No. 88-535.

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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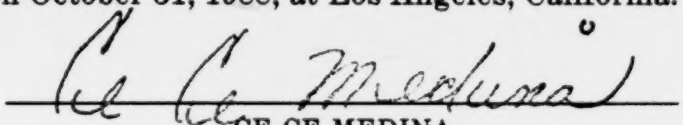
All Parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on October 31, 1988, at Los Angeles, California.



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